Nova Scotia

ANNUAL REPORT

*for the year ending*
*March 31, 2004*

# Workers' Compensation Appeals Tribunal

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*for the year ending*
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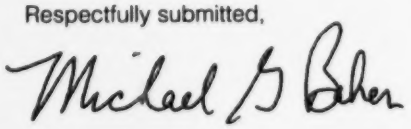
# Workers' Compensation Appeals Tribunal

To Her Honour
The Honourable Myra A. Freeman
Lieutenant-Governor of Nova Scotia

May It Please Your Honour:

I have the honour to submit the Annual Report of the Workers' Compensation Appeals Tribunal for the fiscal year ending March 31, 2004.

Respectfully submitted,



Michael G. Baker, Q.C.
Minister of Justice

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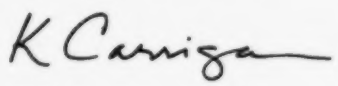
Minister of Justice

Dear Honourable Minister:

The Workers' Compensation Appeals Tribunal is pleased to present its Annual Report for the fiscal year ending March 31, 2004.

Respectfully submitted,



Katherine F. Carrigan
Chief Appeal Commissioner

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# The Year in Review

**Report of the Chief Appeal Commissioner**

WCAT's year was marked by two important features. The first was a focused review of our case management practices, leading to a blueprint for the future. The second was the release by the Supreme Court of Canada of a significant decision concerning chronic pain and the Tribunal's authority to decide constitutional issues.

In the case management area, we focused on developing an approach that is responsive to the needs of the workers and employers we serve. We made a number of advances, including adopting the Board's electronic claim file technology, introducing a more flexible scheduling process, and creating procedures tailored to the needs of self-represented workers.

In the first quarter, we conducted a formal survey of workers who had recently received decisions from the Tribunal. Workers were generally pleased with the politeness and respectfulness of staff, the clarity of our letters, and the ability of WCAT staff to answer their questions. A percentage of workers were unhappy with the outcome of their decisions, with being treated fairly, with the length of time it takes to go through the appeal process, and with the clarity of WCAT's decisions.

The results of the survey have helped us to shape the direction of service provision. We look forward to building on the consultation process in the coming year and expanding it to include employers.

Of particular importance to WCAT this year was the ground-breaking, October 2003 decision of the Supreme Court of Canada in *Martin*. The Court found that s. 10B of the *Workers' Compensation Act* and the *Functional Restoration (Multi-Faceted Pain Services) Program Regulations*, which limited benefits for workers suffering from chronic pain, were unconstitutional and in violation of the equality provisions in the *Canadian Charter of Rights and Freedoms*.

The Court held that the blanket exclusion of chronic pain from the workers' compensation system did not minimally impair the rights of chronic pain sufferers. In making its findings the Court effectively restored WCAT's 1999 decisions in *Martin* and *Laseur*, and provided guidance to workers' compensation systems, in general, concerning the treatment of chronic pain.

In a preliminary issue, affecting both WCAT and administrative tribunals across the country, the Court found that WCAT had jurisdiction to consider the constitutional validity of the chronic pain provisions. In the course of its decision the Court held that WCAT had authority to decide general questions of law, and that it was fully adjudicative in nature.

The full implications of the Court's decision on WCAT's authority to decide *Charter* issues has yet to be realized. The Tribunal currently has one appeal before it in which constitutional issues have been raised. The appeal in question challenges the age-based limitation on earnings loss awards, in s. 37 of the Act. We expect that appeal to be heard by way of oral hearing, in the fall.

Following the Supreme Court's decision in *Martin*, WCAT (like the WCB), postponed and adjourned appeals which appeared to involve chronic pain. We expected to lift the stay once the Supreme Court's decision becomes effective, in April 2004, or a legislative response is made to the decision. At year-end, there were 168 chronic pain appeals "on hold" at the Tribunal. Another 323 chronic pain appeals from WCAT decisions remained in abeyance at the Nova Scotia Court of Appeal.

WCAT rendered decisions of significance in a number of important areas this year. Most of these decisions resulted from appeals heard by panels of three Commissioners, chosen by the Chief Appeal Commissioner in cases involving novel or significant issues. The following areas were addressed in panel decisions this year:

- the treatment of "stress" under the *Government Employees Compensation Act* [GECA]
- workplace exposures to toxic chemicals
- whether noise-induced hearing loss deteriorates after removal from the source
- whether the Worker was "in the course of employment" so as to bar an action against the Employer, under s. 28 of the *Act*
- assignment of damages from an action in another jurisdiction
- whether an administration fee charged by the Workers' Compensation Board to settle a third party action was permissible
- the test for awarding interim benefits under s. 247(4) of the *Act*

The Court of Appeal rendered decisions in relation to six appeals from WCAT decisions this year. Two of the most significant decisions of the Court decided the following:

- "entitlement" is to be treated consistently under the *Workers' Compensation Act* and GECA. The Act's reduced standard of proof in s. 187 applies to federal government employees (Morrison)

- the current Act applies, retrospectively, to recognition of a psychological injury occurring prior to February 1, 1996 *(MacEachern)*

The number of appeals taken from the Tribunal's decisions to the Nova Scotia Court of Appeal were fairly consistent with last year. Approximately 18 new appeals were filed this year. This represents approximately 2 per cent of decisions rendered in the year. At year-end, there were 16 active appeals from WCAT decisions before the Court of Appeal.

WCAT performance measures set out in the Act were tracked this year, as in the past. For example, decisions were consistently rendered within the 60-day time frame required by the Act. Decision length was monitored, in accordance with s. 252A of the Act. Few decisions necessitated the correction of typographical or clerical errors.

As in the past, we monitored our decisions this year for quality, consistency, and the nature of the issues we were asked to consider. Significantly, the Tribunal remained free of a backlog of appeals. All appeals other than the chronic pain appeals placed in abeyance since October, were heard as soon as appeal participants indicated that all evidence and submissions had been provided to the Tribunal.

Operationally, the volume of chronic pain appeals at WCAT contributed significantly to our total, outstanding appeals. At year-end, there were 491 unresolved appeals, as compared with 398 the year before. However, when the chronic pain appeals are removed from consideration, the volume of outstanding appeals—323—has actually decreased by 19 per cent. The number of appeals received this year was comparable to last year. The number of decisions rendered (727) was, however, significantly lower than the 831 decisions released last year. We attribute this to the fact that chronic pain appeals have been set aside since October.

In other respects—the timeliness of resolving appeals, appeal outcomes, the nature of the issues on appeal, and the type of representation—WCAT remained fairly consistent with the previous year. The percentage of oral hearings increased by about 5 per cent, to 40 per cent of all appeals decided in the year. This likely reflects WCAT's increasing emphasis on relating to the specific needs of self-represented workers. We also saw an increase in the volume of postponements, both of submissions and evidence deadlines in paper review appeals, and in oral hearing dates. This increase is coupled with an increase in the length of time it takes Workers' Advisers to prepare appeals to be heard by the Tribunal. The difficulty in obtaining medical evidence from specialists in a timely manner appears to be a root cause of these delays.

Aside from appeal resolution issues, the year was not without its unique challenges, including time lost due to natural disasters and water infiltration into our premises in January. As a result of the water infiltration, WCAT relocated to temporary quarters, where we remained at year-end. Planning for more permanent space is currently underway.

Financially, the Tribunal remained within budget in most areas—despite the costs associated with our relocation. Total expenditures were within 95 per cent of original authority and within 97 per cent of our revised forecast. Expenditures were increased by only 9 per cent over fiscal 2002–03, for a total of $1,422,687.

WCAT continued to focus this year on relationships with our system partners—the WCB, Workers' Advisers Program (WAP) and Occupational Health and Safety Division of Department of Environment and Labour. Several key developments took place.

We began meeting with senior members of our partner agencies in the workplace safety and insurance system, under the umbrella of the "Coordinating Committee." The Committee was formed to oversee the system's strategic planning and other joint initiatives. Its most significant venture, from WCAT's perspective, is the development of an appeal management system, to track statistics and manage individual appeals. We hope to advance this shared-technology project in the coming year.

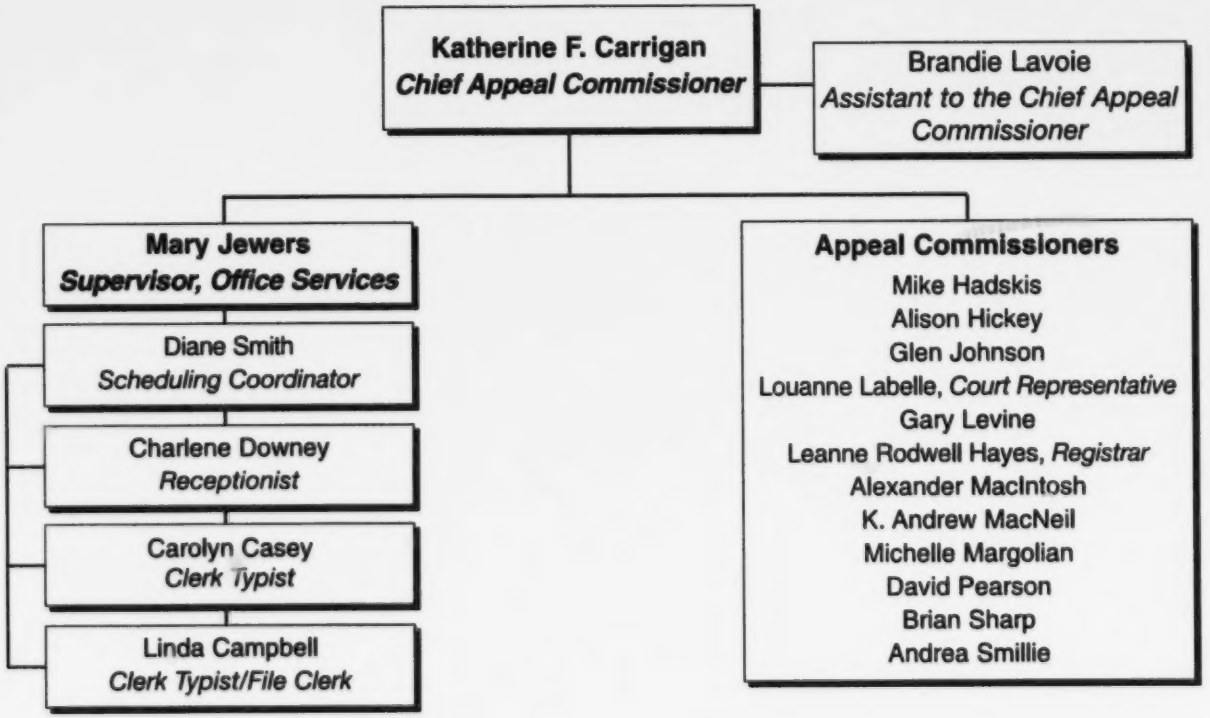
Also at the system level, we exchanged quarterly reports with the other agencies on our respective operational statistics, finances, and activities. Preparations were made for participation in the first annual general meeting of the system, to be held in May.

The year ahead poses challenges and opportunities of its own. We look forward to moving to new office space in the next few months. We hope to resolve the postponed chronic pain appeals in the coming year. In the fall, the Tribunal will hear its first significant *Charter* challenge since the *Martin* and *Laseur* appeals were decided several years ago. In addition, the Tribunal expects to make public its strategic plan vision, mission, and values, and to conduct a formal survey of staff and Commissioners.

The Tribunal will continue to focus on improving case management practices for the benefit of appeal participants in the coming year. We also look forward to working with our system partners to improve workplace safety and insurance service for all Nova Scotians.

Katherine Carrigan
Chief Appeal Commissioner

# WORKERS' COMPENSATION APPEALS TRIBUNAL
# ORGANIZATIONAL CHART, AS OF DECEMBER 2003



# Workplace Safety and Insurance System Strategic Planning

The past year saw to completion the system's first strategic plan, which had been in development during the previous year. This achievement marked the beginning of a new working relationship between the system agencies, as we commenced work under several of the plan's objectives.

**Completion of the WSIS Strategic Plan**

WCAT participated in Roundtable Two—a strategic plan discussion and review with system agency representatives and stakeholders—on May 26. As a result of this roundtable, a stakeholders' group was formed to provide further input into the development of the strategic plan. On completion of that work, a final version of the plan was approved in August and forwarded to the Chair of the Workers' Compensation Board for referral to its Board of Directors. The plan was released to government in September.

Following adoption of the strategic plan, WCAT and its partner agencies continued their work under a formal mandate as the WSIS Coordinating Committee.

**Quarterly Reports to the Board of Directors**

One of the committee's first objectives was the preparation of quarterly reports to the WCB Board of Directors. The committee concluded its first report in October, based on the July-September period. A second quarterly report, covering the period October-December, was submitted to the Board of Directors in March. WCAT reported on its monitoring for compliance with the statute and spoke to corporate performance measures in the areas of operations, finances, client satisfaction, and employee measures.

**Appeal Management System**

One of WCAT's specific interests was advanced this year, through the cooperative efforts of our System partners. Support for the development of an electronic case management system for WCAT, the Internal Appeals Department of WCB and Workers' Advisers Program was sought from Coordinating Committee, at its June meeting. A "System Requirements Definition Working Group," lead by consultant Dennita Fitzpatrick, was formed to explore the viability of creating such a system. The Working Group met on several occasions, and Ms. Fitzpatrick delivered a presentation to the Coordinating Committee in early October recommending the development of a system.

Following this presentation, Coordinating Committee embarked on the preparation of a high-level plan to determine the resources that would be needed in order to create a detailed plan. This initiative was lead by consultant Maura McGowan, who reported to Coordinating Committee in February.

At year-end, the committee continued to consider its various database options with a view to deciding on whether to commit to the project early in the new fiscal year.

**WCB Workshop for New Employers**

WCAT's Registrar and Chief Appeal Commissioner were available to answer questions and provide written materials about the Tribunal during a day-long workshop sponsored by the Workers' Compensation Board on February 26. The workshop focused on new employers and provided an introduction to the Board. Staff from WAP and Department of Environment and Labour were also present.

**Annual General Meeting**

WCAT will participate, along with the other system agencies, in the first annual general meeting of the Workplace Safety and Insurance System, to be held May 5, 2004.

## WCAT Strategic Planning

WCAT first began its own, internal, strategic planning in June 2002. Throughout the ensuing year we refined our objectives and initiatives, concluding our work in August 2003. As a group, we agreed to revisit the strategic plan on a yearly basis, in late fall.

This year, strategic planning began in December for the 2004–05 year. We were fortunate to have the assistance of consultant Dennita Fitzpatrick to lead the exercise and to assist us in prioritizing and rationalizing our objectives with the system plan.

Dennita conducted pre-planning meetings with each of our staff and Appeal Commissioner groups, to identify issues and concerns, and to develop a values-based focus for the Tribunal. She then facilitated a day-long planning session for the entire Tribunal, on December 15.

A draft plan was circulated following the planning session. Time lines were then developed by the Chief Appeal Commissioner, and the plan was discussed with staff and Commissioners and finalized, in March.

The most significant of the Tribunal's objectives and initiatives are set out in the "Looking Ahead" section of this report.

# The Supreme Court of Canada Decision in Martin

**Martin and Chronic Pain**

On October 3, 2003, the Supreme Court of Canada, in a unanimous decision in *Nova Scotia (Workers' Compensation Board) v. Martin; Nova Scotia (Workers' Compensation Board) v. Laseur*, [2003] 2 S.C.R. 504; 2003 SCC 54, on appeal from *Workers' Compensation Board (N.S.) v. Martin et al.* (2000), 188 N.S.R.(2d) 330 (C.A.), ["Martin"] struck down s.10B of the *Workers' Compensation Act* and the *Functional Restoration (Multi-Faceted Pain Services) Program Regulations* which limited benefits for workers suffering from chronic pain.

The Court found that these provisions infringed s.15(1) of the *Canadian Charter of Rights and Freedoms* and that the infringement was not justified under s.1. It followed that the challenged provisions had no force and effect by operation of s.52(1) of the *Constitution Act*, 1982. The Court postponed the declaration of invalidity for six months from the date of the judgment to preserve the limited benefits available under the legislation until an appropriate legislative response could be developed.

The Court effectively restored WCAT's decisions in *Martin* and *Laseur*. WCAT had refused, on *Charter* grounds, to apply s.10B of the Act and the FRP Regulations in deciding the appeals. On appeal from WCAT, the Nova Scotia Court of Appeal had allowed the appeals.

The Supreme Court noted that chronic pain syndrome and related medical conditions had emerged in recent years as one of the most difficult problems facing workers' compensation schemes in Canada and around the world. Nevertheless, because disability was an enumerated ground in s. 15(1) of the *Charter*, it was a proper subject of judicial review to inquire as to whether the way in which a government provides services for chronic pain amounts to discrimination.

The Court found that, by entirely excluding chronic pain from the application of the general compensation provisions of the *Act*, and limiting benefits to a four-week Functional Restoration Program for some workers, the *Act* and the *FRP Regulations* clearly impose differential treatment upon injured workers suffering from chronic pain. This differential treatment was on the basis of the nature of their physical disability, an enumerated ground under s. 15(1) of the *Charter*.

In the context of the *Act*, and given the nature of chronic pain, this differential treatment was discriminatory and the violation could not be justified under s. 1 of the Charter. The blanket exclusion of chronic pain from the workers' compensation system did not minimally impair the rights of chronic pain sufferers.

**Martin and WCAT Charter Jurisdiction**

A preliminary issue before the Supreme Court in *Martin* was whether WCAT had jurisdiction to decline to apply the challenged provisions on the ground that the provisions violated the *Charter*. In a decision which will impact all administrative tribunals in the country, the Court found that WCAT had the jurisdiction to consider the constitutional validity of the provisions.

The Court stated that administrative tribunals which have jurisdiction—whether explicit or implied—to decide questions of law arising under a legislative provision are presumed to have concomitant jurisdiction to decide the constitutional validity of that provision. The presumption may only be rebutted by showing that the legislature clearly intended to exclude *Charter* issues from the tribunal's authority over questions of law.

Specifically, the Court found that the legislature had conferred on WCAT the authority to decide questions of law by providing, in s.252(1) of the *Act*, that it "may confirm, vary or reverse the decision of a hearing officer" exercising the authority conferred upon the Board by s.185(1) of the *Act* to "determine all questions of fact and law arising pursuant to this Part." The presumption was not rebutted as there was no clear implication arising from the *Act* that the legislature intended to exclude the Charter from the scope of WCAT's authority.

Looking beyond the explicit authority, the Court would have found implied authority. In discussing implied authority, the Court stated:

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***"First, and most importantly, there can be no doubt that the power to decide questions of law arising under the Act is necessary in order for the Appeals Tribunal effectively to fulfill its mandate. Any conclusion to the contrary would contradict the legislature's clear intent to create a comprehensive scheme for resolving workers' compensation disputes, notably by barring access to the courts in cases covered by the Act: ..."***

***Martin, per Gonthier, J., delivering the judgment of the Court, at para. 52***

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The Court went on to state that the Tribunal's implied jurisdiction clearly extended even beyond the Act itself to other questions of statutory interpretation or common law. Noting that the Tribunal regularly decides questions of law involving interpretation of common law principles and statutes other than the Act, the Court concluded, at para. 52, that, "Denying the Appeals Tribunal the authority to decide such questions would seriously impede its work and threaten the access by injured workers to a forum capable of deciding all aspects of their case."

Martin also found WCAT to be fully adjudicative in nature:

> ***"In my view, there is no reason to doubt that the Appeals Tribunal is an adjudicative body fully capable of deciding Charter issues, as demonstrated by its competent reasons on the s. 15(1) issue in the case at bar".***
>
> ***Martin, per Gonthier, J., delivering the judgment of the Court, at para. 53***

The Court went on to consider the Nova Scotia, *Constitutional Questions Act*. It concluded that the Attorney General may be provided with an opportunity to intervene in any proceedings involving a constitutional question, thereby relieving the administrative agency of the burden of defending the legislation.

Finally, in the judgment of the Court, it was wrong to take into consideration the backlog of cases that had accumulated at the Tribunal prior to the 1999 amendments. Such considerations can never outweigh the clear intention of the legislature, the backlog has since been cleared, and there was no evidence that the *Charter* challenges caused or contributed to the backlog.

> ***"In contrast, allowing the Appeals Tribunal to apply the Charter clearly furthers the policy objectives outlined in the trilogy. It allows the courts to benefit from a full record established by a specialized tribunal fully apprised of the policy and practical issues relevant to the Charter claim, and permits workers to have their Charter rights recognized within the relatively fast and inexpensive adjudication scheme created by the Act, rather than having to take separate proceedings in the courts in addition to their compensation claim before the administrative tribunal."***
>
> ***Martin, per Gonthier, J., delivering the judgment of the Court, at para. 56***

**Impact of Martin on Chronic Pain Cases Before the Courts**

With few exceptions, all appeals considered by WCAT to potentially raise issues of chronic pain were placed in abeyance after October 3, 2003, until April 2004, when the Supreme Court's decision becomes effective.

Prior to October 3, 2003, all of the chronic pain decisions rendered by WCAT were appealed by the Workers' Advisers Program to the Court of Appeal. As in past years, the appeals were adjourned by the Court pending the Supreme Court of Canada decision. At year end, the appeals remained in abeyance at the Court of Appeal pending the legislative response to the decision.

As of March 31, 2004, there were 323 chronic pain appeals before the Court of appeal. Forty of the appeals were filed in fiscal 2003–04, from Tribunal decisions rendered prior to October 3. One chronic pain appeal is subject to a judicial review proceeding in the Supreme Court of Nova Scotia.

# Developments in the Law: WCAT's Decisions

**Chronic Pain**

The Supreme Court of Canada's decision in *Martin* had a significant impact on the adjudication of chronic pain both at WCAT and within the workers' compensation system as a whole. As of year-end, 168 chronic pain appeals were postponed or adjourned, while awaiting the effective date of the *Martin* decision on chronic pain. One additional appeal was heard, but subsequently adjourned, on the ground that chronic pain continued to be a potential consideration.

Several decisions referred appeals to the hearing officer level, pursuant to s. 251 of the *Act*. The referrals were made on the basis that there were both chronic pain and non-chronic pain aspects to the Worker's condition, and the chronic pain aspect should be adjudicated by the Board once new rules were in place. WCAT also rendered a small number of decisions in which the Worker was considered to have chronic pain but the issues on appeal were not impacted by that finding.

Of the 168 appeals postponed or adjourned, 126 involve representation by the Workers' Advisers Program and the remaining 42 appeals involve self-represented workers.

**Charter Jurisdiction**

In Decision *2003-747-AD* (March 19, 2004), the Worker sought to have certain features of the Act (particularly the appeal scheme) found contrary to the *Charter* on the basis of the Supreme Court of Canada decision in *Martin*. The Appeal Commissioner noted that the Tribunal did not have the broad powers of a superior court to make general declarations of invalidity as sought by the Worker. Although it was inferred that the Worker was claiming his s. 15 rights had been infringed, the Commissioner concluded that the Worker had failed to provide the most basic outline of facts and circumstances from which a *Charter* challenge could be discerned.

**GECA and Stress**

WCAT addressed the issue of the interplay between GECA and the Act in stress claims, in *Decision 2002-783-AD* (December 19, 2003):

*"In the present case, the injury claimed is stress. Under the GECA, there is no limitation placed on recognition of stress-based injuries, while under the Act, the definition of "accident" under 2(a) excludes stress other than that which results from "an acute reaction to a traumatic event."*
*While it might be argued that the limitation placed on the recognition of stress claims under the Act is a provision reasonably incidental to a rate or condition governing compensation, it clearly conflicts with the GECA, which has no such restriction. Given that conflict, I find that the Worker is not governed by the more restrictive definition of accident under the Act. Any other provisions of the Act which are reasonably incidental to a rate or condition governing compensation, and which do not conflict with the GECA apply to the Worker. Section 187 is an example of a provision that meets these criteria (as found by the Court in Morrison) and the Worker benefits from this provision in the recognition of his claim."*

*Decision 2002-783-AD (December 19, 2003)*

There are two other appeals at the Court of Appeal involving psychological injuries under GECA which remain to be decided at year-end: *Canada Post Corporation v. WCAT, WCB and Nurnber* (on appeal from Decision 2002-764-AD (May 29, 2003)), and *Canada Post Corporation v. WCAT, WCB and Safire and CUPW, Nova Local* (on appeal from *Decision 2001-873-AD* (August 13, 2003)).

The Appellant Employer in both cases is arguing that WCAT erred in law by using the wrong test to determine if the worker suffered a psychological injury under GECA. In both cases WCAT followed a previous panel decision of the Tribunal, *Decision 2000-29-AD* (October 2, 2000), in adopting a two-part test for psychological stress.

**Medical Aid**

*Decision 2003-565-AD* (November 26, 2003) dealt with the provision of medical aid for a worker with a significant arm injury. A general set of principles was formulated for exercising the discretion to provide medical aid to assist with mobility and self-care, and to reduce the impact of an impairment other than by way of an attendant allowance:

*"In arriving at a decision on this appeal I have reviewed several Tribunal decisions including 99-975-AD (October 29, 2003); 2000-65-AD (June 30, 2000); 2000-500-AD (November 30, 2000); and 2002-359-AD (August 13, 2002).*

*From these decisions I draw the following general principles for exercising the discretion to provide medical aid to assist with mobility, self-care, and generally reduce the impact of an impairment other than by an attendant allowance (this is not meant to be a comprehensive list):*

*- generally items to assist in basic needs are covered, for example, items that allow a worker to wash, cook, get out of bed, use the washroom and be mobile within the home.*

*- generally home maintenance items are not covered.*

*- the more severe an impairment the more important the goals of helping a worker reach independence and re-establishing a place within the broader community.*

*- where an injury has resulted in their being health hazards to a worker in their home these are usually addressed by modifications to the home.*

*- items that have purely a recreational use are generally not provided as medical aid.*

*- cost is a relevant consideration.*

*- these principles are to be applied with flexibility taking into account individual circumstances and giving workers the benefit of the doubt."*

*Decision 2003-565-AD (November 26, 2003)*

In *Decision 2002-542-AD-2* (September 10, 2003), the Worker was denied medical aid to cover the cost of setting-up a cultivation operation to grow marijuana for medical purposes. Board Policy 2.3.1 required that health care benefits must be "consistent with generally accepted practice within the health care community." The use of marijuana for pain relief was not such a practice. The Commissioner stated that the Board was entitled to structure discretionary benefits as long as the exercise was consistent with the Act, as was Policy 2.3.1.

**Workplace Exposures/ Environmental Illness**

In *Decisions 2000-562-AD, 2000-563-AD, 2000-503-AD, 2000-508-AD, 2000-504-AD, 2000-509-AD, 2000-557-AD, and 2000-565-AD* (April 7, 2003), a panel of three Appeal Commissioners considered appeals from eight claims for injuries occurring as a result of exposures to toxic chemicals in the workplace. The panel conducted an extensive review of the principles relating to causation and burden of proof in exposure/environmental illness appeals. A test for causation was articulated, as follows:

*"The Panel finds that consideration of the type of exposure that has occurred, the temporal relationship between the exposure and the symptoms developed by the Worker, the existence of other health problems and the Worker's condition upon removal from the workplace, are factors relevant to determining causation in this appeal. In addition, the Panel has considered the possible role of reporting bias, in determining the causation of the Worker's injury."*

*Decision 2000-562-AD (April 7, 2003)*

Particularly noteworthy was the panel's consideration of scientific reports dealing with threshold limit values [TLV's] and the effects of exposures below TLV. Recognizing that air quality reports often do not identify dangerous levels of exposures based on TLV's, the panel found that in the absence of exact measurements, conclusions must be drawn about the compound and how it was used from the available information. The panel concluded that concentrations in excess of TLV's should not be the only measure of potential harm.

**Occupational Disease**

*Decision 2003-155-AD* (October 7, 2003) dealt with a claim on behalf of a deceased worker for recognition that the worker's renal cell carcinoma was caused by exposures while employed as a welder in a steel plant. Recognition was granted on the basis of substantial generic evidence, including studies of iron and steel industry workers, which revealed a significant increased risk of developing renal cell cancer.

*In Decision 2003-802-AD* ( March 22, 2004), a claim was recognized for thoracic outlet syndrome which developed over time, rather than from a specific incident as is typically the case. The condition was found to have arisen out of the general nature of the Worker's employment and her workstation set-up. Significant evidence was lead concerning repetitive strain injuries and thoracic outlet syndrome.

*In Decision 2003-29-AD* (September 26, 2003), a panel considered whether hearing loss continues to deteriorate as a result of workplace noise exposure, following removal from the noise source. The panel concluded that although there was some evidence to suggest that noise-exposed hearing deteriorates at a greater rate than non-noise-exposed hearing, current generic evidence was merely suggestive and did not yet meet the standard of proof in s. 187.

**Determinations as to Whether Right of Action is Barred**

Three decisions were rendered this year under the Tribunal's jurisdiction per s. 29 of the Act to determine whether a right of action of a worker, the worker's dependant, or the worker's employer is barred as against an employer or the employer's "servants or agents."

In *Decision 2002-928-TPA* (June 18, 2003), an accident which caused fatal injuries to a Worker was found not to fall within the scope of s. 28(2) of the Act where the injuries did not result from the use or operation of a motor vehicle registered or required to be registered under the *Motor Vehicle Act* (MVA). The Worker had been pinned and crushed between a forklift and his truck. The forklift, although a motor vehicle, was not one intended to be operated on a highway in the Province since its use was restricted to a lumber yard.

Applying the two-part test in *Briton Amos v. Insurance Corporation of British Columbia* 3 S.C.R. 405, the Worker's injuries did not result from the use or operation of his truck since the circumstances did not constitute the ordinary and well known activities to which automobiles are put. Further, there was no nexus between the injuries and the ownership, use, or operation of the truck.

In *Decision 2003-648-TPA* (February 24, 2004), a panel addressed the issue of work-relatedness in a case where the Worker was not yet on the Employer's premises but was entering the building by steps leading to the front door. The panel found that injuries resulting from her fall on the top step, four feet away from the door, arose out of and in the course of her employment.

Reliance was placed on the "reasonably incidental," "enhanced exposure to risk," and "sphere of employment/place of employment" tests, as well as previous case law. The actions against the property management firm and the snow removal contractor were barred because they were covered employers. The fact that the Employer neither owned nor maintained the building was not determinative.

In *Decision 2002-844-TPA* (June 26, 2003), the Appeal Commissioner found that the applicants were not employers and/or employees of employers covered under Part 1 of the Act; therefore, the action was not barred as against them. Section 30 of the Act, which provides for a period in which to elect to sue, did not bar the action against the applicants as the election requirements operate for the benefit of the Board and not third parties.

**Referral to Hearing Officer**

The past few years have seen a general increase in appeals resolved by referral to a Hearing Officer under s.251 of the *Act*.

Section 251 permits WCAT to refer for reconsideration any matter connected with an appeal, to the Hearing Officer who decided the matter. This may occur where the quantity or nature of new or additional evidence merits the referral and, since 1999, it may also occur where, "the disposition of the appeal merits the referral." The referral may be made at any point in the hearing of an appeal.

In the six-year period between 1996 and 2001, there were 45 referrals, including 25 in 2000–01. In 2001–02 there were 30, and in 2002–03, 81. In fiscal 2003–04, WCAT issued 57 referrals, resolving approximately 8 per cent of appeals by referral to the Hearing Officer for reconsideration.

While the majority of WCAT referrals are on the basis of additional evidence submitted to the Tribunal (which alters the evidentiary base considered by the Hearing Officer), many appeals are referred back because the disposition of the appeal merits the referral.

Since April 1, 2003, matters referred back to the Hearing Officer are monitored by WCAT to determine whether the referrals contribute to the better adjudication of compensation claims. Of the 60 Hearing Officer decisions rendered since April 1, 2003, in relation to referrals from the Tribunal in 2002 and 2003, 26 (43 per cent), were denied, upon reconsideration. Many of the denials were by way of supplementary decisions following referral to a Board Medical Advisor. Three decisions were preliminary in nature. The remaining decisions were either allowed or allowed in part, and a significant number of these decisions referred matters to the client services level for further adjudication.

**disposition of the appeal:** The necessity to avoid "piece meal adjudication" is often referred to as the reason for a referral. *Decision 2003-56-RTH* (May 8, 2003) is representative. In that case, the referral was made so that reconsideration could take into account the worker's degenerative arthritis which had not yet been quantified. This determination could influence the Worker's permanent impairment rating—the issue on appeal. The referral also noted that the compensability of any psychiatric symptoms should be adjudicated by the Board prior to reconsideration of the permanent impairment.

Referrals in *Decisions 2003-294-RTH and 2003-164-RTH* (August 26, 2003) were made because other claims of the worker were being dealt with concurrently at the Board level. In one case a commutation request and in the other, a claim for pneumonoconiosis, was being considered, while the appeal to the Tribunal involved automatic assumption. In *Decision 2003-69-RTH* (June 27, 2003), the appeal was referred back when the work-relatedness of a heart condition was being considered by the Board in the context of a survivor benefits claim. The issue on appeal was the causal relationship of the heart condition to the Worker's asbestosis, and the effective date of a PMI for the latter condition.

**failure to consider all evidence:** In *Decision 2003-007-RTH* (May 30, 2003), a referral for purposes of reconsidering a chronic pain conclusion was made in light of the evidence in all of the files referenced by WCAT's decision. The Hearing Officer had referenced only one claim, whereas the Worker, over the course of 30 years in the poultry processing industry, suffered numerous injuries to the shoulder and neck.

**jurisdictional reasons:** *Decision 2003-383-RTH* (October 27, 2003) and *Decision 2002-308-RTH* (July 28, 2003) also considered requests for medical aid. In *Decision 2003-383-RTH* medical aid was sought in relation to a condition which had not been recognized by the Board. In *Decision 2002-308-RTH*, medical aid was sought in relation to an exposure to chemicals which had not been specifically addressed by previous decision makers. In *Decision 2002-532-RTH* (May 14, 2003), the non-chronic pain aspects of a claim had not been considered by the Board when determining entitlement to further benefits.

**final decision and referral:** WCAT has issued a number of decisions which make both a final determination on an issue and refer another matter connected with the appeal back to the Hearing Officer. In fiscal 2003–04, nine such decisions were issued.

In *Decision 2003-13-AD-RTH* (October 21, 2003), and Decision 2003-326-AD-RTH (October 30, 2003), final determinations were made regarding certain issues on appeal (such as a permanent medical impairment rating), while other issues (such as entitlement to vocational rehabilitation and medical aid), were referred back.

In *Decision 2002-907-AD-RTH* (May 5, 2003), the Tribunal found that the Worker had suffered a personal injury in the form of an anxiety disorder but referred the work-relatedness of the condition to the Hearing Officer, as the Hearing Officer had conducted a lengthy oral hearing and was in the best position to decide that issue.

In *Decision 2003-569-AD-RTH* (November 27, 2003), there was insufficient evidence to apportion the Worker's PIB, however, apportionment of the EERB was referred back to the Hearing Officer. The Worker had pre-existing degenerative disc disease and Policy 3.9.11 directs the Board to obtain as much evidence as possible about the effect of the disease on the Worker's pre-accident earnings capacity. It also requires the Board to seek an opinion as to whether a degenerative condition would have progressed without the compensable injury. Once those issues are addressed, the Board must apportion the benefit using the Policy categories. The language of the Policy was considered mandatory, and the Board's decision not to apportion the EERB was premature in that the Policy had not been followed.

**specific directions:** In *Decision 2002-936-RTH* (April 25, 2003), the Commissioner issued specific directions to the Hearing Officer to "determine, with certainty" whether the Board had, in materially similar claims, paid clothing allowances to workers with back braces during a period prior to the effective date of the Board's most recent policy. On appeal, the Board challenged the Tribunal's authority to issue specific directions in a referral to the Hearing Officer under s.251. While not specifically addressing the issue, the Court of Appeal, in *WCB v. Hurley and WCAT*, substituted its own directions, finding that WCAT's were patently unreasonable.

**Other Decisions of Note**

**employer's duty of re-employment:** The Appeal Commissioner, in *Decisions 2003-176-AD and 2003-211-AD* (August 29, 2003), found that an employer failed to meet its obligation to accommodate the effects of a Worker's compensable injury, "to the extent that the accommodation does not cause the employer undue hardship", in accordance with s. 91(1) of the Act. Inquiries should have been made about the Worker's physical fitness to cope with a more physically challenging job. The Employer's argument that the terms of a grievance settlement precluded the Worker from seeking benefits was rejected on the basis of s. 87, which prohibits a Worker from waiving compensation to which he may be entitled under Part I of the *Act*.

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***"The Appeal Commissioners continue to meet regularly to discuss the sometimes complex and significant legal issues which arise in the decision-making context. I believe these opportunities facilitate sharing of legal knowledge and promote consistency and coherency in our decisions."***

***- Katherine F. Carrigan, Chief Appeal Commissioner***

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**definition of "worker" and exclusions from coverage:** In *Decision 2003-627-AD* (March 2, 2004), a captain of a vessel involved in a fatal injury came within the definition of "worker" in s. 2(ae)(vi) of the Act because he was a crew member of the vessel, under a profit-sharing arrangement. He had been the sole shareholder of a corporate employer that owned the fishing boat. He received dividend income from the company, but not a salary. The Commissioner found that the *Act* did not require a worker's earnings to be received as "employment income" on T4 slips instead of dividends. There was nothing to preclude a worker from being characterized as such merely because he used a limited company from which he received profits.

*Decision 2002-634-AD* (April 30, 2003) considered whether a newspaper carrier was a "worker" excluded from coverage by s. 3(1) of the Act and s. 12 of the General Regulations. Section 12 excludes persons soliciting subscriptions for or selling newspapers and other periodicals. While acknowledging that exclusions are generally interpreted narrowly, the Tribunal found that "and" in this case meant "or", as to do otherwise would lead to absurd results. The Worker was excluded by operation of s.12 of the Regulations.

In *Decision 2003-104-AD, 2003-314-AD* (July 17, 2003), the Appeal Commissioner found that the Worker was covered under s. 2(ae)(ii) of the *Act*, as an "officer, director or manager of an employer... actively engaged in the business and ... on the payroll of the business at ... actual earnings." To the extent they conflicted, the exclusionary provisions of s. 2(ae)(xiii), did not apply. Section 2(ae)(xiii) excludes from the definition of "worker" family members of an employer or corporate director, where the family member is employed by and lives with the employer or corporate director as a member of their household.

Subsection 2(ae)(ii) was more specific with respect to the worker's circumstances and its application was consistent with a liberal construction of the *Act* in favour of extending coverage to workers. In the alternative, the Worker was a covered worker by virtue of s. 4 of the *Act*, which permits the Board, in certain circumstances, to extend coverage to persons not otherwise covered. Reading ss.4(6) and (7) in conjunction with s.2(ae), the Worker was a covered worker because the Employer had applied to include her as one of its listed employees for assessment purposes.

The Commissioner considered clause 13 of Policy 3.1.1R2, which limits a "self-employed worker" to special protection limits in some cases. It was found inapplicable because the worker was not self-employed; rather, she was an employee of a corporation.

**notice of accident or injury:** In *Decision 2003-584-AD* (January 29, 2004), the Worker's claim in relation to chronic active hepatitis was found to be statute barred under s. 83(6)(b) of the *Act*. The Commissioner referred to *Meechan v. Nova Scotia (Workers' Compensation Board) et al.*, 196 N.S.R. (2d) 313 (C.A.), specifically, at paragraph 39, wherein Saunders, J.A., in a concurring opinion, stated that, "the triggering event in a request for compensation ... is that the worker's claim come to the attention of the Board." While the Board did not know of the claim until it received an Accident Report, the Commissioner found there was a delay of greater than five years from the date the Worker suspected or understood she had an occupational disease.

In rejecting the argument that the Tribunal should apply s. 190 of the *Act* to extend the time to file a claim, the Commissioner referred to *Walsh v. Nova Scotia (Workers' Compensation Appeals Tribunal) et al.* (2001), 190 N.S.R. (2d) 123, at paragraph 8, wherein the Court stated that, "Clearly, the Board's discretion under s. 190 is subject to the provisions of s. 83." The Commissioner considered the Tribunal's discretion to be no greater than that of the Board.

**right of action in another jurisdiction:** A panel, in *Decision 2002-627-AD* (October 2, 2003), found that s.32 applied retroactively to a worker who was injured in 1986 and received damages in a 1988 action against the Employer in Texas. Section 32 requires assignment to the Board of a worker's rights of action in another jurisdiction. The Worker filed for compensation in 1986, and was awarded permanent benefits by the Board which were suspended in 1995. The Worker sought to have them reinstated.

The panel applied the Court of Appeal's decision in *MacEachern*, finding that there was no contrary intention as expressed in the Act to justify failing to give s.32 a retroactive effect. WCAT found that the Board had power to withhold payment of compensation until such time as the worker assigned to the Board the damages he recovered from the Texas litigation. The worker has appealed to the Court of Appeal.

**administration fee for money recovered:** In *Decision 2002-436-AD* (October 31, 2003), a panel concluded that s. 31(2) of the *Act* did not authorize the Board to charge an administration fee in relation to third party claims. The Worker sought reimbursement of the fee charged by the Board in relation to a third party settlement obtained by the Board concerning the Worker's 1994 motor vehicle accident. The panel interpreted s.31(2), remedially, giving the worker the benefit of the doubt, and strictly construing the Board's authority to withhold or deduct funds. Neither the term "cost" nor "expenditures" was found to include an administration fee in relation to third party subrogated claims. The decision is under appeal to the Court of Appeal.

**interim benefits:** In *Decision 2002-436-PAD* (August 12, 2003) (preliminary to *Decision 2002-436-AD*, discussed above), a panel denied a worker's request for an interim payment under s.247(4) of the Act, which allows for interim awards in relation to appeals adjourned as a result of referral to the Chair of the WCB, Board of Directors. The panel found that the award would be premature as the worker's entitlement to relief had not yet been established.

In reaching its conclusion, the panel noted that its approach was consistent with the practice in Nova Scotia Civil Procedure Rule 33.01, which permits an interim payment award to be made where there has been an admission of liability by, or a judgment obtained against, a defendant. If neither exists, no further consideration is given to the request.

# Appeals from WCAT Decisions

In fiscal 2003, there was a slight increase in the number of "non-chronic pain" appeals from WCAT decisions to the Court of Appeal, as reflected in an increase in appeals filed by unrepresented appellants and by employers.

There were 18 appeals filed. Two were initiated by the Board, one by the Workers' Advisers' Program and seven by employers. Seven appeals were brought by self-represented workers and one worker appeal was brought by outside counsel.

Many appeals were resolved during the fiscal year 2003–04. Four appeals were discontinued by the appellants. One appeal was dismissed on motion of the Court's Registrar for non-compliance with the rules. Four appeals were dismissed by the Court at the leave stage. Three Applications for Leave to Appeal were granted and moved to the merit stage. Four appeals were remitted back to WCAT by consent of all parties.

The Court of Appeal allowed five appeals. Four matters were remitted back to WCAT for rehearing and one matter was remitted to the Board. The Court dismissed one appeal. A discussion of the Court's reasons in five of the decisions follows.

**Government Employees Compensation Act (GECA)**

In *Cape Breton Development Corporation v. Estate of James Morrison*, 218 N.S.R. (2d) 53; 2003 NSCA 103, the Court of Appeal considered the interplay between the *Workers' Compensation Act* and the Government Employees Compensation Act, R.S.C. 1985, c. G-8 [GECA] as it relates to entitlement to survivor benefits. The deceased worker had a 70 per cent permanent medical impairment under the automatic assumption provisions of the *Act*.

The only issue on appeal was whether s.187 of the Act (the reduced burden of proof) applied to the determination of entitlement under GECA. The worker's estate had the burden of proving that the worker died as a result of an industrial disease. WCAT had recognized entitlement, applying s.187 of the Act. The Court denied the Employer's appeal.

The Court held that in considering the interrelationship of GECA and the Nova Scotia *Act*, there was no basis for finding any real distinction or conflict between entitlement as expressed in GECA and the entitlement provisions of the *Act*. The Court added that the language in s. 4(1) of GECA was sufficiently broad and inclusive to embrace the language creating entitlement in the Nova Scotia *Act*.

It followed that a worker entitled under GECA to claim compensation in Nova Scotia is by necessary implication also entitled to the benefits, and is bound by any restrictions contained in the provisions of the Nova Scotia *Workers' Compensation Act*. The Court concluded that the language of GECA did not support an interpretation which would exclude federal workers who require the assistance of s. 187 to be entitled to workers compensation in Nova Scotia.

In its final analysis, the Court referred with approval to the brief of the Attorney General of Canada. The Court concluded that there was a close nexus between the provincial "benefit of the doubt" provision (s. 187) and "compensation," and there was no conflict between s.187 and GECA.

"The Attorney General submits that the interplay between GECA and the WCA ought to be interpreted as follows:

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***The provincial workers' compensation scheme governs claims submitted under GECA provided that:***

***(a) the provision in issue is reasonably incidental to a "rate" or "condition" governing compensation under the law of the province, and***

***(b) the provision is not otherwise in conflict with GECA."***

***- Cape Breton Development Corporation v. Estate of James Morrison, at para 35***

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On November 28, 2003, the Employer, Cape Breton Development Corporation, filed an Application for Leave to Appeal to the Supreme Court of Canada, from the decision of the Court of Appeal. A decision on Leave is expected within six to eight months of filing.

Following its decision in *Morrison*, the Court of Appeal allowed the appeal in *McLellan v. Nova Scotia (Workers' Compensation Appeals Tribunal)*, 218 N.S.R. (2d) 176; 2003 NSCA 106. That appeal involved a federal worker seeking recognition of an occupational disease. The Court remitted the matter to WCAT for review of all relevant evidence in light of the provisions of the Nova Scotia Act including s. 187. WCAT had applied the balance of probabilities to the question of entitlement.

**GECA and Stress**

The test for recognition of a stress injury under GECA was one of the issues under appeal in *Myatt v. Workers' Compensation Board (N.S.) et al.*, 2004 NSCA 40. The Court did not, however, deal with the issue as it allowed the appeal on other grounds. The Court found that WCAT erred in law in failing to apply the correct standard of review to the Hearing Officer's findings of fact based on the assessment of oral testimony before the Hearing Officer. WCAT conducted the appeal by way of a paper review only and had no new evidence before it.

The Court went on to say that in determining the appropriate test for compensability of psychological injuries under GECA, a consideration of the interaction between the accident definitions in GECA and the Nova Scotia *Act* was necessary. Development of the test was left for another day because WCAT had not addressed the issue (its decision having been rendered prior to *Morrison*), and the Court preferred to have the informed views of WCAT on the issue.

There are also two other appeals at the Court of Appeal involving psychological injuries under GECA which remain to be decided at year-end: *Canada Post Corporation v. WCAT, WCB and Nurnber* CA203322 and *Canada Post Corporation v. WCAT, WCB and Safire and CUPW, Nova Local CA* 207366.

**Retrospective Operation of the Statute**

In *MacEachern v. Workers' Compensation Board* (N.S.), 214 N.S. R. (2d) 302;2003 NSCA 45, the Court of Appeal found that WCAT erred in law by applying the definition of accident from the former Act when recognizing a claim for psychological injury. The Court reaffirmed its previous decision in Nova Scotia *(Workers' Compensation Board) v. Muise (1998)*, 170 N.S.R. (2d) 253, quoting with approval from that decision.

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***"Clearly, the current Act, save where a contrary intention appears (as in s. 228), is intended to apply to parties who had suffered injuries prior to its enactment."***

***MacEachern v. Workers' Compensation Board, at para. 41***

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The Court noted that the worker was injured prior to February 1, 1996, but made his claim for recognition of a psychological injury under the current Act.

**Referrals to Hearing Officer**

In *Workers' Compensation Board v. Workers' Compensation Appeals Tribunal and Hurley* CA200935 (Order for Judgment dated November 28, 2003), the Court dealt with the appropriateness of the directions given to the Hearing Officer by WCAT in a reference under s.251 of the Act. The Court found the WCAT decision was so broad as to be patently unreasonable. The Court allowed the Board's appeal, in part, and replaced the last paragraph of WCAT's decision with more appropriate wording, returning the claim to the Hearing Officer for a determination on the issue under consideration.

# Appeal Management

**Tribunal Registrar**

The Tribunal's Registrar continued to provide intake, scheduling, and assignment services over the past year.

Several "appeal streaming" initiatives were begun this year, to accompany our existing practices:

- The Registrar oversaw a project to make telephone contact with self-represented workers early in the life of an appeal.
- As of March, the Registrar began a closer examination of new appeals to identify those which should be referred back to the Hearing Officer for reconsideration.
- In March, the Registrar assumed responsibility for the intake processing of applications received pursuant to s. 29 of the Act.

The Tribunal's Supervisor, Office Services and Appeal Commissioner, Andrea Smillie conducted background research on practices involving self-represented workers in other jurisdictions. They began making contact with workers to set hearing dates; to determine if additional evidence is to be provided; to clarify the issues on appeal; and to clarify Tribunal processes. Their report, with recommendations for future practices, was received in late March.

In appropriate cases, the Registrar will provide a brief submission opportunity to all appeal participants, directed to the appropriateness of utilizing the s. 251 referral process at the outset of the appeal. Once the submission period has expired the Registrar may issue a decision referring the matter to the Hearing Officer level, or may proceed to determine the mode of hearing and set deadlines for submissions and evidence.

Working together with the WCB's Internal Appeals Department, the Registrar revised the Tribunal's list of decision issues codes this year. The revised list promotes consistency between the two agencies and ensures that all relevant issues on appeal can be tracked during the life of the claim—from initiation, throughout all levels of appeal. The revised list is expected to be presented to Appeal Commissioners, for their consideration, in May 2004.

**Frequently Asked Questions**

A Working Group of staff and Appeal Commissioners was formed in March to identify "Frequently Asked Questions," and to develop information for responses that can be given consistently by Tribunal staff when inquiries are received from workers. This group expects to conclude its work in May, for consideration by the entire Tribunal.

**Case Management Review**

At the beginning of fiscal 2003–04, the Tribunal was nearing completion of Phase I planning with the assistance of our project manager consultant. The definition of the Tribunal's Current State, together with identification of areas for improvement was accomplished by June. By that time we had also implemented most of the "quick hit" opportunities we had identified for improvement in service delivery and internal operations.

The Case Management Review team, lead by our project consultant, began the process of considering WCAT's ideal, "Future State", in June, during Phase II of our project. The Future State envisioned the process and technological changes which would be needed to support a new approach to case management.

Some of the key features of WCAT's Future State are the following:

*appeal streaming* - appeals will be processed according to the issues on appeal, and other relevant considerations, in order to be more responsive to the needs of particular types of appeals. Information will be sought from the worker or the worker's representative as to their readiness to proceed. This information will help determine the stream to which the appeal is assigned.

*elimination of appeal batching* - this affects both the identification of submission and evidence deadlines and the assignment of appeals to Appeals Commissioners. Deadlines will be set according to the date, rather than the month, received. Appeals will be assigned to Appeal Commissioners as soon as submissions are received rather than at the beginning of each month.

*technological improvements* - the creation of a statistical tracking and appeal management database is critical to the proper functioning of the Tribunal's future case management process. We anticipate that most of the Future State changes will await development of the database improvements, slated to begin in January 2005.

While the Future State plan, as whole, remains to be implemented over the next two financial cycles, we were able to advance certain of the short- and medium-term initiatives this year. The following are particular examples of our accomplishments:

- revision and implementation of a new, condensed Notice of Appeal form which could be forwarded by the Workers' Advisers Program, to the Tribunal, electronically

* the creation, in draft, of agency performance measures for the Tribunal
* database revisions for purposes of enhancing our ability to report statistics
* the development of a procedure manual encompassing the administrative aspects of appeal management
* preparation of the documentation, processes, and procedures around the new Practice Directions: Notice of Intention to Participate and Employer's Access to Documents Regarding a Worker's Claim File

**Stakeholder Satisfaction Survey**

A telephone survey of 150 workers who had received decisions from the Tribunal in the preceding three to six months was conducted in late June and early July, by Corporate Research Associates. This important initiative was a first for the Tribunal. It provided us with useful information that would permit evaluation of our case management processes for the benefit of workers. The initial survey allowed us to benchmark worker satisfaction with the Tribunal's present operations and to identify areas for improvement. We plan to repeat the survey, yearly.

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***"The opportunity to seek feedback from the people we serve was extremely valuable in shaping our priorities this year, and for the foreseeable future. The survey provided meaningful information about the things WCAT is doing well, and about the areas in which we can improve. I look forward to continuing the dialogue with workers and employers in the coming year, in order to be more responsive to their needs."***

***- Katherine F. Carrigan, Chief Appeal Commissioner***

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The survey was facilitated by WCB Communications Officer Doug Roberts, who provided significant assistance in adapting the existing WCB survey tool to measure the types of services provided by WCAT. Assisted by Appeal Commissioner Andrew MacNeil and a small WCAT project team, Mr. Roberts oversaw the administration of the survey and assisted in ensuring both the completeness of the report and the interpretation of numerical results.

Overall, 42 per cent of workers were completely or mostly satisfied with WCAT, and 25 per cent were completely or mostly dissatisfied. The largest group of respondents—67 per cent—were neither satisfied nor dissatisfied. The key areas of worker satisfaction and dissatisfaction, together with the percentages of respondents who held that view are listed below.

Workers were satisfied with the Tribunal in the following areas:

- politeness of staff - 75 per cent
- respectfulness of staff - 68 per cent
- clarity of letters - 62 per cent

- ability to answer questions - 56 per cent
- Workers expressed dissatisfaction with the Tribunal in the following areas:
- outcome of decision - 29 per cent
- being treated fairly - 27 per cent
- length of time to process appeal - 23 per cent
- decision clarity - 17 per cent

In our analysis of the results, it became apparent that the perception of fair treatment was significantly influenced by decision outcome—and by mode of hearing. However, we also considered that the length of time to process an appeal influenced feelings of fairness, as did the clarity of our decisions. Decision clarity was also thought to be a factor in dissatisfaction with decision outcome.

The gap between the areas considered to be of most importance to workers and the degree of worker satisfaction or dissatisfaction with the Tribunal is of significance. A "gap analysis" revealed that the following key factors were of critical importance to workers and that the workers were less than completely satisfied with WCAT's performance in these areas:

- decision clarity (61 per cent)
- being treated fairly (58 per cent)
- length of time to process appeal (58 per cent)
- method used to process the appeal (55 per cent)

The Tribunal has focused its efforts in the months since the survey on improving services in the areas of greatest gap between importance and satisfaction. Some of the initiatives undertaken to improve "fairness", the "length of time to process appeals" and the "method used to process the appeal" are addressed elsewhere in this section. Initiatives to improve "decision clarity" include the following:

- Appeal Commissioners conducted monthly education sessions on "plain language" principles and decision-clarity, for their own benefit.
- An advanced decision-writing workshop has been organized for WCAT Appeal Commissioners and the WCB's Hearing Officers. The workshop will be conducted in May 2004, and is based on materials developed by the British Columbia Council of Administrative Tribunals.

- WCAT's Decision Quality Guide underwent extensive revisions this year. The Guide is used by Appeal Commissioners, when writing decisions.

**Pilot Projects: Joint Oral Hearing Scheduling and Paper Review Scheduling**

The Registrar chairs two pilot projects that impact on the scheduling of appeals. The pilot projects were begun in November, and Terms of Reference were developed by the system's Tripartite Committee in January.

One project aims to facilitate the scheduling of oral hearings by Halifax Workers' Advisers at both WCAT and Internal Appeals, through the introduction of flexibility in date-setting and an interactive, joint scheduling process involving all three agencies.

Oral hearing scheduling for Halifax-based Workers' Advisers now takes place through "docket days," which are held twice a month, attended by personnel from WCAT, Internal Appeals, WCB Legal Department, and WAP. WCAT and Internal Appeals prepare lists of appeals to be scheduled by the Workers' Advisers in advance of these scheduling conferences. The expectation is that Workers' Advisers come to the docket day prepared to schedule those oral hearings, provide an explanation as to why an oral hearing cannot be scheduled, and/or schedule an alternate appeal.

One of the project deliverables is the creation of an electronic scheduling calendar, which displays pertinent information concerning the oral hearings already scheduled before WCAT and Internal Appeals. Designated personnel at WCAT and Internal Appeals will have access to the scheduling calendar for purposes of inputting the scheduling information.

The creation of a scheduling calendar will facilitate the efficient use of resources in setting oral hearing dates. It will also permit members and staff of all three participating agencies to easily access information concerning the dates, times, locations, and other details regarding scheduled hearings. As of year-end, discussions had taken place concerning the creation of the calendar, and it was anticipated that further steps would be taken in the spring.

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***"I have found it very beneficial to be part of the Joint Oral Hearing Scheduling Committee because not only of the rapport developing between the different departments, but also any difficulties experienced by the participating departments are being worked out. It also gives me a better understanding as to why there are a number of delays in scheduling certain appeals."***

*- Diane Smith, Scheduling Coordinator*

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The second pilot project offers Sydney Workers' Advisers greater flexibility in scheduling paper review appeals by informing WCAT at the time an appeal is filed of the time frame within which they anticipate being able to provide submissions and evidence. The project goals are to reduce the volume of adjournment requests to WCAT, as well as to facilitate expedition of appeals which are ready to proceed earlier than WCAT's standard deadlines would indicate.

In order to ensure that average appeal processing times are not increased as a result of the introduction of scheduling and date-setting flexibility, the Terms of Reference for both projects set out minimum numbers of appeals to be scheduled, consistent with current volumes.

The docket day process, with respect to Halifax oral hearings, appears to promote greater information sharing by Workers' Advisers concerning scheduling, and reasons for not scheduling appeals. However, volume standards are frequently not met. Sydney Workers' Advisers Program advises the Tribunal earlier as to the date on which paper review submissions are intended to be provided. However, deadline extensions are still sought, in some cases, beyond the self-selected time frames, and minimum volume standards are frequently not achieved.

We look forward to reviewing both projects in greater detail, with the aim of enhancing project parameters for the benefit of all participants.

**Improvements for Self-Represented Workers**

This year, WCAT initiated some service improvements for self-represented workers, to assist them in understanding and participating in the Tribunal's appeal process, and to shorten the time it takes to resolve their appeals. Self-represented Workers are now often contacted early in the life of an appeal—sometimes before they receive a letter from WCAT advising how their appeal will proceed. Already, the average time to resolve appeals has decreased.

Early contact with self-represented workers enables us to

- clarify the issues on appeal
- make the decision as to whether a paper review or an oral hearing should be held
- find out if the worker intends to provide additional evidence or submissions
- immediately schedule the oral hearing
- clarify the Tribunal's appeal processes

In addition to increasing our pre-hearing contact with workers, we revised the Tribunal's standard letters to self-represented workers this year, in order to provide clearer, more accessible information. The letters indicate mode of hearing and establish deadlines for submissions and evidence in paper reviews, as well as confirming the date, time, and place of an oral hearing.

**Electronic Claim File**

WCAT concluded its Electronic Claim File ("E-File") Pilot project in August. The project involved a review of Board claim files exclusively in electronic format, via desk-top computer, as part of the decision-making phase of an appeal. The pilot project team provided a report to the Chief Appeal Commissioner recommending adoption of the technology for use in paper review appeals.

This report was shared with the WCB, as it contained a number of recommendations for technological improvement to the electronic claim file in order to increase efficiency and ease of use. Early in the life of the project WCAT decided to rely on paper copies of the Board's electronic claim files for purposes of oral hearings because of the need to have the claim file available to all participants, during oral hearings.

Following receipt of the Pilot Team's recommendations, we extended use of the E-File to all Appeal Commissioners and staff. A training session for Appeal Commissioners was provided by WCB personnel. Reliance on electronic access to claim files was "eased in" over the period from October to February, in order to permit Appeal Commissioners to become familiar with its application. By March, Appeal Commissioners were adjudicating paper review appeals without a paper copy of the file. Occasionally, copies of medical reports are printed from the claim file, where necessary.

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***"It was a pleasure to work with the WCB employees to facilitate our evaluation and use of the e-file system. This joint project demonstrates the benefits of inter-agency cooperation as recommended by the Dorsey Report."***

***- Sandy MacIntosh, Appeal Commissioner***

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With the adoption of E-File, WCAT also assumed responsibility for printing claim files and sections of files during the phase-in period. This necessitated the acquisition of a printer to facilitate large-scale printing. One of our support staff, Linda Campbell, oversaw the printing of E-Files and provision of print copies to Appeal Commissioners. She also monitored the costs and other impacts of the move to E-File and will be reporting to WCAT's case management group on her findings.

Of the approximately 491 appeals remaining at year-end, approximately 40 per cent involved electronic claim files. Approximately 60 per cent of the Tribunal's appeals proceed by paper review; consequently, we estimate there are 118 appeals awaiting resolution by the Tribunal in a paper-less format.

# Appeal Statistics

In the past year, 890 appeals were filed with the Tribunal—a decrease of approximately 4 per cent over fiscal 2002–03. Appeal volumes have ranged from 42 to 94 per month, with an average of 74 per month, as compared with 84 last year. (See Charts 2A and B.) 727 decisions were issued, and an additional 74 appeals (nearly 8 per cent), received in the year were withdrawn or dismissed because they had not been perfected.

Consistent with previous years, the overwhelming number of appeals are those of injured workers: 708 of the 727 decisions rendered in the year (97 per cent) resulted from appeals launched by workers or their representatives. Ten other appeals were brought by employers from worker claims, and six were employer assessment appeals. Three decision were rendered under the Tribunal's jurisdiction to determine whether a right of action is barred by the Act. (See Charts 9A and B). Workers were represented by the Workers' Advisers Program in 482 appeals (66 per cent) and by other representatives in another 95 appeals(13 per cent). The remaining 21 per cent of appeals involved self-represented workers. (See Charts 10A and B.)

Of the 934 individual issues occurring in decisions from worker-initiated appeals this year, thirteen issue-based categories were represented. The most common issue in decisions was permanent impairment (new or additional), followed closely by medical aid expenses and then temporary benefits (new or additional). The permanent impairment issue arose in 25 per cent of appeals, medical aid 24 per cent, and temporary benefits 23 per cent. Only 1.5 per cent of appeals involved chronic pain, a slight increase (from 1.25 per cent) over the previous year. (See Charts 5A and B.) Six issues were related to employer assessment appeals. (See Charts 6A and B.)

Of the 727 appeals that proceeded to a final decision in 2003–04, the majority—51 per cent—were in relation to appeals received in the year. This is identical to the previous year. At year end, there were 491 unresolved appeals, 168 of which potentially involved chronic pain and were adjourned by the Tribunal while awaiting legislative amendments to the *Workers' Compensation Act*. (See Charts 4A and B.)

There were 323 "active appeals" (the total outstanding appeals less those deemed to potentially involve chronic pain) remaining to be decided, at year end. This is a reduction from the 398 appeals outstanding at the end of 2002-03.

Approximately 36 per cent of the Tribunal's active (non-chronic pain) appeals received in the year remained for decision at year-end, as compared with 41 per cent of appeals the previous year. (See Chart 4A.) Consistent with the Tribunal's internal processes, the majority of decisions this year—approximately 61 per cent—were resolved within five months of filing the appeal. This is comparable to last year, in which 65 per cent of appeals were resolved within the same time frame.

All of the Tribunal's outstanding, "active" appeals are "work in progress" because they await one of the following: receipt of submissions and evidence from the participants, the scheduling of oral hearing dates by the participants, a decision from the Tribunal (within the 60 day period under the Act), or a determination as to mode of hearing. The Tribunal continues to remain free of an appeal "backlog" at the end of 2003–04.

Appeals resolved by oral hearing again increased by 5 per cent this year, to approximately 40 per cent of appeals decided in 2003–04. Overall, the Tribunal granted oral hearings in 57 per cent of cases in which they had been requested. That figure is consistent with the 54 per cent of oral hearing requests granted in the previous year. (See Charts 8A and B.) Particular attention has been paid in the past year to ensuring that self-represented workers receive oral hearings unless the paper review format is clearly more appropriate. The emphasis on providing appropriate assistance to self-represented workers is evident in our statistics. Sixty-one per cent of self-represented workers' requests to proceed by oral hearing were granted this year. In general, approximately 35 per cent of self-represented workers' appeals proceeded by way of oral hearing.

Postponement and adjournment of oral hearings and extension of deadlines in paper reviews continue to be significant phenomena affecting the Tribunal's monthly workload, and workload planning. The vast majority of such requests—93.5 per cent—are granted by the Registrar. This compares favourably with last year, in which 92 per cent of such requests were allowed.

In the past year, statistics maintained by the Tribunal's Registrar indicate that, on average, 32 appeals per month did not go forward within the anticipated time frame as a result of extensions, postponements, and adjournments. This compares with an average of 21 appeals per month last year. The volume of appeals extended, postponed, and adjourned is approximately 43 per cent of appeals filed per month—a significant increase over last year, in which we estimated 24 per cent of appeals filed were postponed or adjourned.

The most significant reason for the request to extend a paper review deadline, or to postpone or adjourn an oral hearing, is that medical evidence sought from a physician has not yet been received. While not entirely clear, it appears that the increased wait to obtain independent medical evidence from treating specialists may account for the significant increase in both volume and percentage of adjourned or postponed appeals.

## Development of Practice Directions and Internal Policies

The Tribunal introduced several new Practice Directions this year, including two which were begun and finished during the year: Notice of Intention to Participate and Employer's Access to Documents Regarding a Worker's Claim.

**Notice of Intention to Participate**

This Practice Direction became effective in March. It sets out the rights of participants in appeals and the additional rights that accompany oral hearings. The Practice Direction goes on to identify the procedure for obtaining notice of an employer's intention to participate.

Once an appeal is filed with the Tribunal a determination is made as to mode of hearing—oral or paper—and deadlines for submissions and evidence, or the time frame for holding an oral hearing, are set. The Tribunal will then send the Employer a form entitled "Employer Notice of Intention to Participate."

The form asks the Employer to indicate whether or not it will participate in the appeal. If the Employer intends to participate, it is also asked to signify whether copies of any relevant claim files or appeal documents are being requested and to specify any objections it may have to the mode of hearing identified by the Tribunal for the particular appeal.

The Employer is given two weeks to return the form to the Tribunal, and is asked to copy the form to the Worker and the WCB. If the Employer indicates that it wishes to participate, the Tribunal will continue to send information about the appeal to the employer and the employer will be given a full opportunity to participate in the appeal.

If the Employer indicates that it does not wish to participate, no further information concerning the appeal will be forwarded, with the exception of the Tribunal's final decision. If the Employer does not return the completed form by the specified date for doing so, it will be assumed that the Employer does not wish to participate and no further information will be provided, nor will opportunities be extended to participate in the appeal. Nevertheless, should the Employer subsequently advise that it wishes to take part, the Tribunal will permit it to do so, but existing deadlines for tendering evidence and making submissions may remain in place.

In general, the Notice of Intention to Participate accomplishes several goals outlined in WCAT's Future State document:

- promotes timely appeal resolution by determining who are the appeal participants
- permits the worker and other appeal participants to prepare for the appeal hearing with advance knowledge as to whether the employer intends to participate
- reduces the volume of Tribunal correspondence sent to employers who do not wish to participate an appeal
- promotes administrative efficiency by reducing staff time and supplies used in corresponding with employers who do not wish to participate in an appeal

A brief description of the new Practice Direction and related form has been included with all "mode of hearing" letters sent to appeal participants since March. We hope to include the description of our new Practice Direction in the Workers' Compensation Board bulletin to Employers, entitled "Info at Work," which is expected to be released later this spring.

**Employer's Access to Documents Regarding a Worker's Claim**

The Tribunal created the Practice Direction: Employer's Access to Documents Regarding a Worker's Claim File as a companion to the Practice Direction: Notice of Intention to Participate. The absence of statutory authority in the Tribunal to provide employers with copies of material its receives after an appeal has been filed also lead to the need for direction from the Tribunal.

The basic underlying principle is that the provision of a fair hearing to the employer who is participating in an appeal requires that any document or record relevant to the appeal be disclosed to the employer. This includes the Board claim file(s) and other documents sent directly to the Tribunal by the Worker or the Board.

The Practice Direction outlines the procedure for dealing with an employer's access to relevant documents. The Employer is asked to complete the Notice of Intention to Participate form, including the section which asks the Employer to indicate what documents or records in the Tribunal's possession it wishes to receive copies of. The form then requires the Employer to agree not to disclose or use the documents or records for any purpose other than pursuing or responding to an appeal before the Tribunal.

The form indicates that the employer will be charged a fee related to the cost of staff salaries expended for time in reviewing files for relevancy. In practice, the Tribunal has charged twenty-five dollars per file for this review. Subsequent requests for file updates have not been made subject to a fee.

Before giving file copies to an employer, the worker will be given an opportunity to object to the employer's access to the documents or records. The Tribunal will then rule on the release of the documents after the date for objections has passed, and will forward the file copies to the employer where they have been found to be relevant to the appeal.

**Mode of Hearing**

Stakeholder input was sought in relation to this Practice Direction in June. After further internal consultation it was finalized, implemented, and posted to the Tribunal's website in August. The Practice Direction outlines the factors that the Tribunal takes into consideration in deciding whether to grant an oral hearing or a paper review in a particular appeal.

**Summonses and Orders for Production**

When asked to issue a summons or an order for production of documents, the Tribunal will have reference to this Practice Direction, introduced in August. In the past year, we conducted stakeholder consultation in June. The document was then reviewed internally, finalized, implemented, and posted to the Tribunal's website.

**Decision Quality Guide**

In the past year the Tribunal revised its Guidelines for Decision Quality, used as an internal reference by Appeal Commissioners. The new "Decision Quality Guide" will assist Appeal Commissioners in producing decisions of high quality and will be used as a tool for performance review purposes when evaluating the quality of decision-writing.

**Section 29 Applications**

In March, the Tribunal began work on a Practice Direction to provide information to the legal community, in particular, concerning the process for resolving applications to the Tribunal to determine whether a right of action against an employer, or the employer's "servants and agents" is barred. A working group of Appeal Commissioners and staff was tasked with developing a Practice Direction and corresponding internal procedures, as well as a pamphlet and other communications. We anticipate that this work will be complete in May 2004.

# Professional Development and Training

Appeal Commissioners and staff participated in a variety of conference and training opportunities this year, as in the past.

The Assistant to the Chief Appeal Commissioner took part in courses offered by the Workers' Compensation Board for its staff in a number of substantive law areas, such as entitlement, re-employment, and extended benefits. One of our staff participated in a multi-faceted course entitled "Extraordinary Administrative Support," sponsored by Saint Mary's University, and another person attended a conference for Legal Assistants, sponsored by the Nova Scotia Barristers' Society.

Staff were also involved in a number of courses offered by WCB and the Public Service Commission covering a broad spectrum of topics, including communications, writing and other technical skills, and administration and management.

A significant focus for Appeal Commissioners was the development of skill in the areas of mediation and negotiation. Course work in the "alternative dispute resolution" field is seen as complementary to WCAT's possible involvement, with our system partners, in the early, informal resolution of worker's claims or appeals. Initiatives of this type are part of the WSIS Strategic Plan and may become a feature of WCAT's future planning. We also expect that the skills acquired will be of benefit in the more formal adjudication process.

Three of the Tribunal's Appeal Commissioners took part in "Negotiation and Dispute Resolution" and seven Commissioners participated in a "Mediation" workshop. One Commissioner enrolled in "Advanced Communication Skills." These courses were offered through Dalhousie's Henson College, and followed the work done by several Commissioners in this area last year.

Two Commissioners who are expected to lead any future alternative dispute resolution programs which the Tribunal may undertake, participated in an intensive, four-day, Advanced Alternative Dispute Resolution course offered by University of Windsor Law School, in Toronto, in September.

***"Participation in the intensive ADR workshop was one of the most valuable educational experiences I've had. The skills involved in prinicpled negotiations are skills which enhance almost every professional interaction. There was a great deal of individual coaching aimed at improving interpersonal skills. The overall experience was very empowering because the course made it very clear that good interpersonal skills in the mediation or any other context can facilitate positive outcomes."***

***- Andrea Smillie, Appeal Commissioner***

In addition to alternative dispute resolution, Appeal Commissioners enhanced their skills in a number of other areas, including first aid, Excel Basics software taught by the Workers' Compensation Board, and a public speaking program entitled, "Power Talk," offered through the Public Service Commission.

This year, as in previous years, the Tribunal participated in the Council of Canadian Administrative Tribunals annual conference in Gatineau, last June. Five Commissioners and the Chief Appeal Commissioner attended this conference, which was preceded by a meeting of the heads of workers' compensation appeal bodies across the country.

During the conference, the Chief Appeal Commissioner spoke at a panel session with the Workers' Compensation Board of Nova Scotia's Vice President, Client Services and Acting CEO, Nancy MacCready-Williams, on the subject of appeals tribunal and board interactions and joint initiatives. The presentation highlighted the system strategic planning work which had been done in the past year as a model for enhancing working relationships between system partners. The presentation generated discussion and healthy debate amongst the attendees.

Commissioners also participated in the following conferences and panel discussions:

Canadian Institute for Administrative Justice, Roundtable Dialogue Between Courts and Tribunals—a meeting of tribunal members and the judiciary. This year's focus was "the expert Tribunal" and its relationship to the courts. (Gatineau, Quebec, June)

"2003 Association of Workers' Compensation Boards Learning Symposium" webcast, (Halifax, September)

"Workers' Compensation: Law and Practice" a health and safety law conference. Included amongst the topics for discussion was "shift work maladaption syndrome," and employer concerns about accommodation, re-employment, and modified duties. (Toronto, October)

The Canadian Institute, "Advanced Administrative Law and Practice." Included amongst the topics addressed at the conference was the Martin decision of the Supreme Court of Canada. (Ottawa, October)

"Chronic Pain and Litigation", a panel discussion lead by physicians and lawyers held in connection with a meeting of the Nova Scotia Medical-Legal Society. (Halifax, January)

In addition to the various training and conference opportunities, the Tribunal was invited to attend a WCB staff information session in March, at which guest speaker Martin L'esperance spoke about workplace safety and health. This event signified another positive aspect of WCAT's working relationship with WCB, and was well-received by the WCAT staff who took part.

## Looking Ahead: Developing and Meeting Tribunal Goals in 2004–05

**System Strategic Plan and Case Management Review**

The Tribunal hopes to begin the development of an Appeal Management System late in 2004, as a cooperative venture with the WCB and WAP. The system will facilitate statistical management as well as the tracking of individual appeals.

We also expect to complete pilot projects, underway with WAP and WCB, concerning the introduction of flexibility in scheduling oral hearings and paper reviews. Both projects are slated for completion in October 2004.

Continuing to work on improving the services we offer to self-represented workers is an ongoing project for the Tribunal. Associated with that work is the review of Tribunal correspondence and other written communications for purposes of clarifying and simplifying our communications. We hope to further our work in this area in the coming year. In March, the Tribunal began developing more complete and accurate responses to "Frequently asked Questions" in order to enhance the work of our front-line staff. This project will continue into April 2004.

**Client Focus Groups**

Feedback on decision quality will be sought through "client focus groups." We hope to improve the clarity of, and accessability to, the Tribunal's decisions as a result of the comments we receive from stakeholders.

**Tribunal Strategic Plan and Code of Conduct**

In the spring of 2004, the Tribunal will be releasing its Vision, Mission and Values, developed during the strategic planning process. We also expect to release a Code of Conduct in the coming year.

**Revisions to Individual Performance Measures**

The Tribunal intends to focus on performance measurement in the coming year, with a view to finalizing performance targets and measures for the Tribunal, and revising individual performance targets for Appeal Commissioners. The broader focus for these initiatives is WCAT's participation in the Stakeholder Consultation Committee, as part of the WSIS strategic plan. The Committee, which includes representatives from each of the system agencies as well as workers and employers, will establish targets and measures for the system as a whole.

**Employee Satisfaction Survey**

This year, WCAT conducted an informal survey of its staff, for internal use. In the coming year, we plan to conduct a formal survey of staff and Commissioners, in order to benchmark satisfaction levels and determine areas for internal focus. We expect to share the high level results with our stakeholders as a measure of the Tribunal's performance.

**Tribunal Practice Directions**

Several Practice Directions were issued in the past year, while several others are anticipated in the coming year. In March, the Tribunal began working on a Practice Direction and a pamphlet which will serve as a procedural guide for "right to sue" applications under s. 29 of the Act. Other Practice Directions which we intend to pursue are: a guide for Commissioners on the conduct of oral hearings; the waiver of full-participant status, and the impact of failure to attend an oral hearing; and guidelines for the assignment of panel hearings.

**Library and Research Services**

Commissioners received access to the Quiklaw database this year. In the coming year, we hope to explore other database resources and enhance our library capabilities. Some focus will also be placed on reviewing the Tribunal's decision database and its accessability to the public.

**Decision Writing Training**

A two-day decision-writing course will be provided, jointly, to Appeal Commissioners and Hearing Officers in May 2004. The course will be administered by persons trained in delivering the British Columbia Council of Canadian Administrative Tribunals, (BC,CCAT), advanced decision-writing program. Two Appeal Commissioners, Louanne Labelle and Brian Sharp, have assisted in developing the training and will assist in its delivery.

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*"To be true to our vision, we must communicate clearly. This year the Tribunal took important steps to help Appeal Commissioners improve the quality of our communications—a plain language course, and decision writing training. We know that clarity in writing is very important. Now we have more skills to help us write clearly."*

*- Brian Sharp, Appeal Commissioner*

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**Training in the *Conduct of Oral* Hearings**

The Tribunal plans to participate in developing a training program, using the BC,CCAT model for advanced training in the conduct of oral hearings, to be undertaken in the coming year. This initiative will assist the Tribunal in fulfilling its strategic planning goals.

**Other Professional Development and Training**

Among its other professional development opportunities, two of the Tribunal's staff will attend the annual conference of the Association of Workers' Compensation Boards, in August. We also hope to participate in the intensive decision-writing course offered by the International Association of Industrial Accident Boards and Commissions, in Arizona, in February.

WCAT is endeavouring to obtain some educational instruction from qualified medical practitioners in the coming year, concerning the American Medical Association Guides to the Evaluation of Permanent Medical Impairment.

Finally, the Tribunal will be making renewed efforts in the coming year to track and collate training, professional development, and conferences opportunities, for both Commissioners and staff.

To contact the Workers' Compensation Appeals Tribunal, write to us at our temporary adress:

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World Trade and Convention Centre
1800 Argyle Street, Suite 710
Halifax, NS B3J 3N8

telephone: (902) 424-2250
or toll-free in Nova Scotia: 1-800-274-8281
fax: (902) 424-2321

or visit the Tribunal's website for further information about the Tribunal:

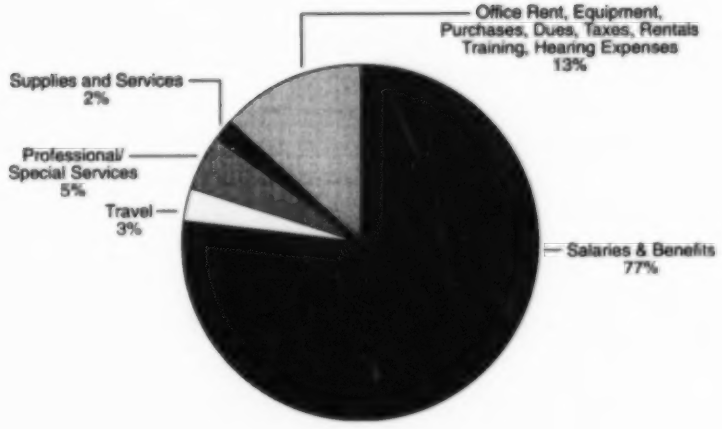
http://www.gov.ns.ca/WCAT

# Budget Expenditures for the Fiscal Year Ending March 31, 2004

**CHART 1A**

| | Authority | Final Forecast | Actual Expenditures |
|---|---|---|---|
| Salaries & Benefits | $1,201,800.00 | $1,180,100.00 | $1,099,433.24 |
| Travel | $ 40,000.00 | $ 35,600.00 | $ 35,875.03 |
| Professional/ Special Services | $ 134,000.00 | $ 106,500.00 | $ 64,171.76 |
| Supplies & Services | $ 40,500.00 | $ 35,500.00 | $ 34,850.78 |
| Office Rent, Equipment Purchases, Dues, Taxes, Rentals | $ 164,500.00 | $ 196,000.00 | $ 188,846.48 |
| Sub Total | $1,580,800.00 | $1,553,700.00 | $1,422,907.29 |
| Less Recoveries | $ 30,000.00 | $ 30,000.00 | $ 490.15 |
| **Totals** | **$1,550,800.00** | **$1,523,700.00** | **$1,422,417.14** |

**CHART 1B**


Office Rent, Equipment, Purchases, Dues, Taxes, Rentals Training, Hearing Expenses 13%
Supplies and Services 2%
Professional/ Special Services 5%
Travel 3%
Salaries & Benefits 77%

# Appeals Received

**CHART 2A**

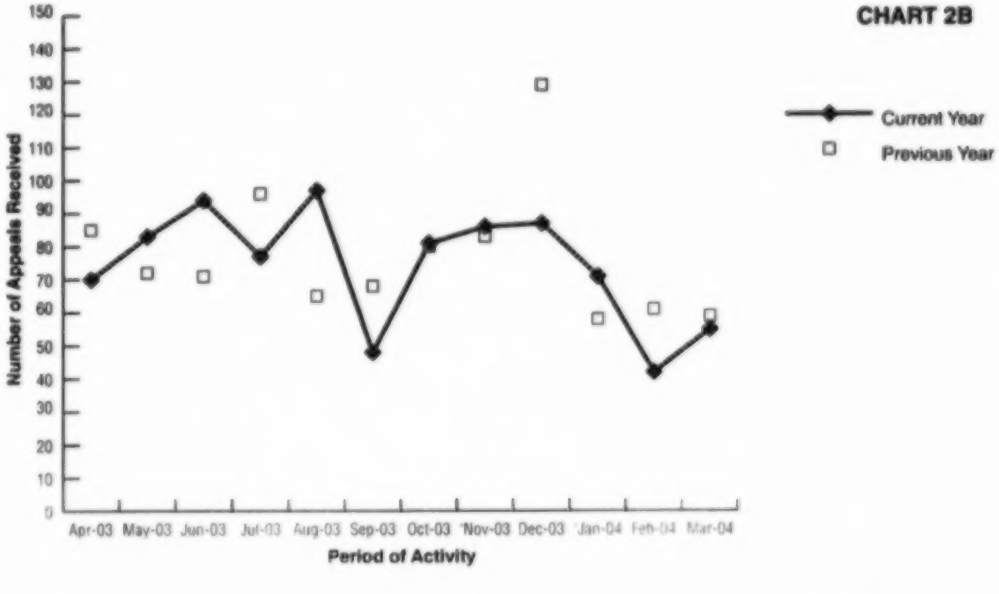
| | Previous Year | Current Year |
|---|---|---|
| April | 85 | 70 |
| May | 72 | 83 |
| June | 71 | 94 |
| July | 96 | 77 |
| August | 65 | 97 |
| September | 68 | 48 |
| October | 80 | 81 |
| November | 83 | 86 |
| December | 129 | 87 |
| January | 58 | 71 |
| February | 61 | 42 |
| March | 59 | 55 |
| **TOTALS** | **927** | **890** |

Average number of appeals received monthly (2003–04) - 74

Average number of appeals received monthly (2002–03) - 77

Percentage decrease in appeals received over previous year - 4 per cent

**CHART 2B**



# Final Decisions Rendered

**CHART 3A**

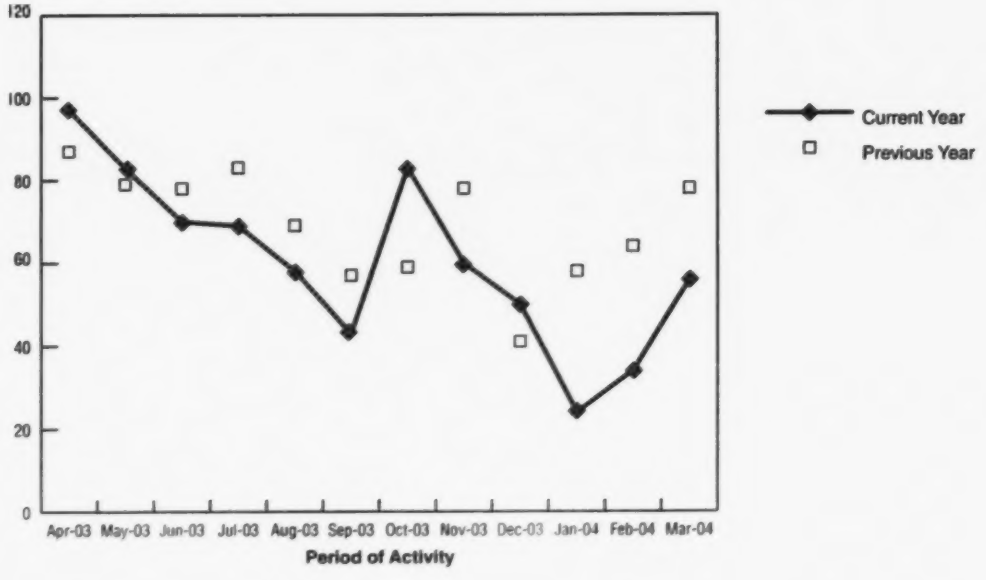
| | Previous Year | Current Year |
|---|---|---|
| April 2002 | 87 | 97 |
| May 2002 | 79 | 83 |
| June 2002 | 78 | 70 |
| July 2002 | 83 | 69 |
| August 2002 | 69 | 58 |
| Sept. 2002 | 57 | 43 |
| Oct. 2002 | 59 | 83 |
| Nov. 2002 | 78 | 60 |
| Dec. 2002 | 41 | 50 |
| Jan. 2003 | 58 | 24 |
| Feb. 2003 | 64 | 34 |
| March 2003 | 78 | 56 |
| **TOTALS** | **831** | **727** |

Average number of decisions rendered per month (2003–04) - 61

Average number of decisions rendered per month (2002–03) - 69

Percentage decrease in decisions rendered over previous year - 12%

**CHART 3B**



# Appeals Outstanding by Year Received

**Appeals Outstanding** **CHART 4A**

| Year Received | April 1, 2002 (Previous Year) | March 31, 2003 (Current Year) |
|---|---|---|
| 1999-00 | 1 | 0 |
| 2000-01 | 8 | 0 |
| 2001-02 | 5 | 2 |
| 2002-03 | 384 | 17 |
| 2003-04 | N/A | 472 |
| **Total** | **398** | **491** |

# Final Decisions by Year Received

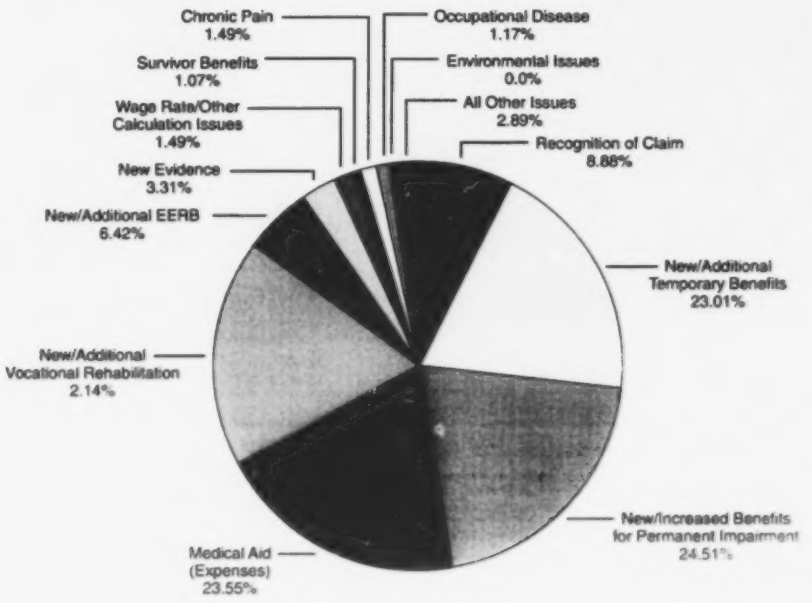
| Year Appeal Received | Final Decisions | **CHART 4B** |
|---|---|---|
| 1999-00 | 1 | |
| 2000-01 | 8 | |
| 2001-02 | 4 | |
| 2002-03 | 344 | |
| 2003-04 | 370 | |

# Decisions by Issue Categories: Worker Initiated Appeals

**CHART 5A**

| | |
|---|---|
| Recognition of Claim | 83 |
| New / Additional Temporary Benefits | 215 |
| New / Increased Benefits for Permanent Impairment | 229 |
| Medical Aid (Expenses) | 220 |
| New / Additional Vocational Rehabilitation | 20 |
| New / Additional Extended Earnings Replacement Benefits (EERB) (incl. Estimated Earnings Capacity) | 60 |
| New Evidence | 31 |
| Wage Rate / Other Calculation Issues | 14 |
| Survivor Benefits | 10 |
| Chronic Pain | 14 |
| Environmental Illness | 0 |
| Occupational Disease | 11 |
| All Other Issues | 27 |
| **Total of all Categories:** | **934** |

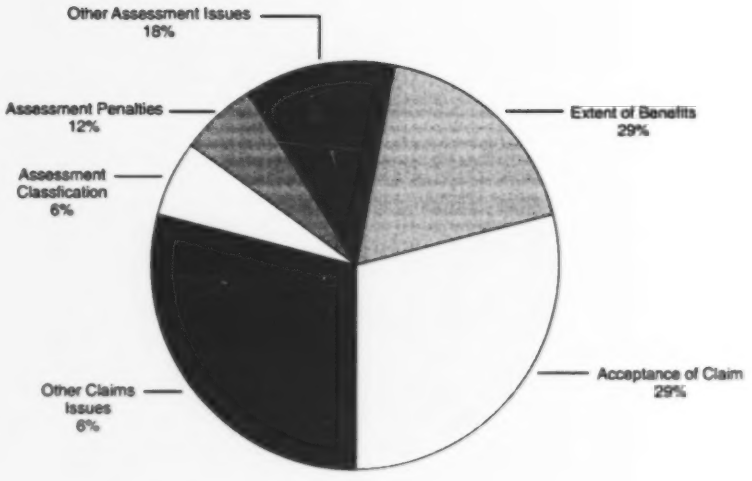
**CHART 5B**



# Decisions by Issue Categories: Employer Initiated Appeals

| | | |
|---|---|---|
| Acceptance of Claim | 5 | **CHART 6A** |
| Extent of Benefits | 5 | |
| Assessment Classification | 1 | |
| Assessment Penalties | 2 | |
| Other Claims Issues | 1 | |
| Other Assessment Issues | 3 | |
| **Subtotal of all Issue Categories** | **17** | |

**CHART 6B**



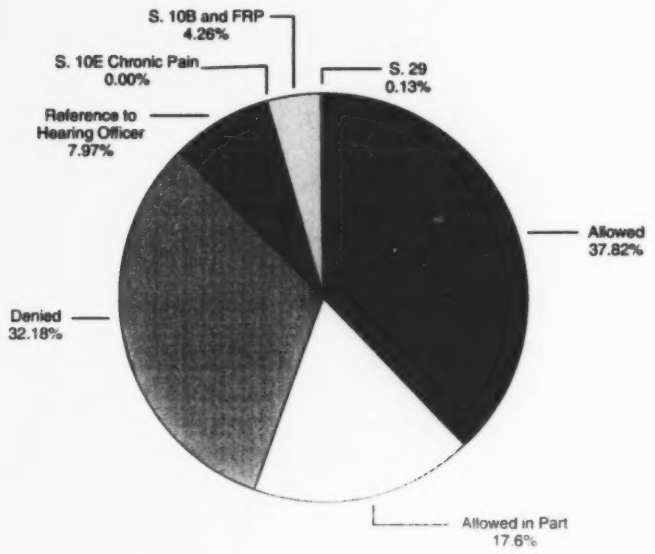
# Decisions by Appeal Category and Outcome

**CHART 7A**

| | Total Decisions by Outcome |
|---|---|
| **Final Decisions** | |
| Allowed | 275 |
| Allowed in Part | 128 |
| Denied | 234 |
| s. 10E (Chronic Pain) | 0 |
| s. 10B and FRP | 31 |
| s. 29 | 1 |
| Reference to Hearing Officer | 58 |
| *Preliminary Decisions | 3 |
| *Correcting Decisions | 6 |
| Total All decisions by Category | 736 |
| **Total Final Decisions** | **727** |

* Preliminary and Correcting Decisions do not reduce the number of appeals outstanding.

**CHART 7B**



# Mode of Hearing

**CHART 8A**

| Month Decision Resolved | OHR/OHG | OHR/PRG | PRR/OHG | PRR/PRG | Total by Month |
|---|---|---|---|---|---|
| April 2003 | 40 | 30 | 0 | 27 | 97 |
| May 2003 | 22 | 37 | 2 | 22 | 83 |
| June 2003 | 24 | 12 | 2 | 32 | 70 |
| July 2003 | 21 | 17 | 2 | 29 | 69 |
| August 2003 | 17 | 19 | 4 | 18 | 58 |
| September 2003 | 15 | 13 | 2 | 13 | 43 |
| October 2003 | 37 | 20 | 2 | 24 | 83 |
| November 2003 | 24 | 13 | 3 | 20 | 60 |
| December 2003 | 23 | 10 | 1 | 16 | 50 |
| January 2004 | 11 | 8 | 0 | 5 | 24 |
| February 2004 | 16 | 6 | 2 | 10 | 34 |
| March 2004 | 21 | 19 | 0 | 16 | 56 |
| **Totals by Type** | **271** | **204** | **20** | **232** | **727** |

Legend: OHR - Oral Hearing Requested PRR - Paper Review Requested
OHG - Oral Hearing Granted PRG - Paper Review Granted

Total oral hearings – 291

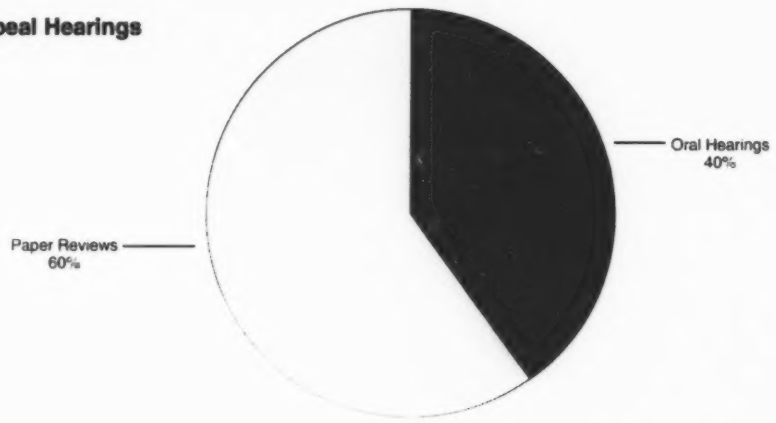
Total paper review hearings – 436

Total hearings – 727

Oral hearing and paper review totals are in relation to the number of final decisions rendered per month.

**CHART 8B**

**Appeal Hearings**

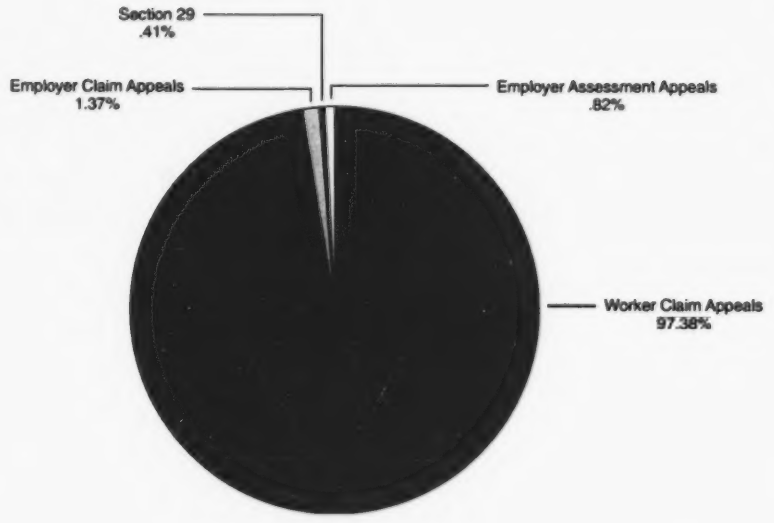


## Decisions by Appellant Type

**CHART 9A**

| | Paper Review | Oral Hearing | Total Appeals |
|---|---|---|---|
| Worker Claim Appeals | 422 | 286 | 708 |
| Employer Claim Appeals | 7 | 3 | 10 |
| Employer Assessment Appeals | 3 | 3 | 6 |
| Section 29 Applications | 1 | 2 | 3 |
| **Total Appeal Decisions** | **433** | **294** | **727** |

**CHART 9B**

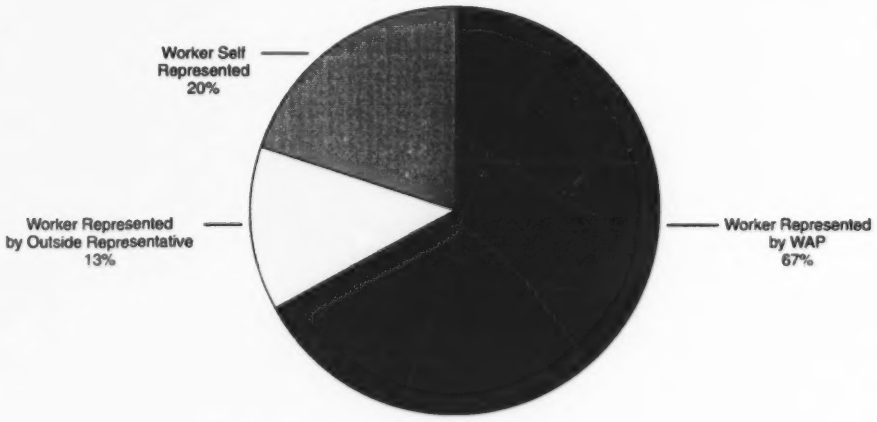


# Decisions by Representation

| Decisions by Appellant Type and Representation | Paper Review | Oral Hearing | Total Appeals |
|---|---|---|---|
| Worker Appeals - Worker represented by WAP | 291 | 180 | 471 |
| Employer appeals - worker represented by WAP | 4 | 3 | 7 |
| Worker Appeals - Worker self-represented | 95 | 49 | 144 |
| Employer Appeals - Worker self-represented | 3 | 0 | 3 |
| Worker appeals - worker represented by outside representative | 35 | 58 | 93 |
| Employer appeals - worker represented by outside representative | 0 | 0 | 0 |
| Section 29 Applications | N/A | N/A | 3 |
| Employer assessment appeal - employer represented by counsel | 3 | 1 | 4 |
| Employer assessment appeal - employer self-represented | 0 | 2 | 2 |
| **Total Appeal Decisions** | **432** | **295** | **727** |

**CHART 10A**

**CHART 10B**



# Appeals and Judicial Review Proceedings from WCAT Decisions

**CHART 11**

| Previous Year (March 31, 2003) | Appeals before NSCA | Judicial Review | Supreme Court of Canada | All Proceedings |
|---|---|---|---|---|
| Adjourned Matters | 281 | 26 | 2 | 309 |
| Active Matters | 18 | 0 | 0 | 18 |
| Subtotal | 299 | 26 | 2 | 327 |
| New Applications for Appeal | 56 | 1 | 1 | 58 |
| Non-chronic pain | (18) | | | |
| Subtotal | 56 | 1 | 1 | 58 |
| Dispositions | | | | |
| Decisions on Leave | | | | |
| Allowed | (3) | | | |
| Dismissed | 4 | 0 | 0 | 4 |
| Decisions on the Merits | | | | |
| Allowed | 5 | 0 | 2 | 7 |
| Dismissed | 1 | 0 | 0 | 1 |
| Remittances by Consent | 4 | 0 | 0 | 4 |
| Discontinued Applications | 6 | 26 | 0 | 29 |
| Subtotal | 20 | 26 | 2 | 45 |
| Adjournments | | | | |
| CP | 323 | 1 | 0 | 324 |
| SCC | 0 | 0 | 1 | 1 |
| Subtotal | 323 | 1 | 1 | 325 |
| Active Proceedings (March 31/04) | | | | 16 |